

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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NATIONSTAR MORTGAGE LLC;
DEUTSCHE BANK NATIONAL TRUST

Plaintiff,

v.

THE LEGACY ESTATES PROPERTY
OWNERS ASSOCIATION *et al*

Defendants.

Case No. 2:16-cv-01934-RFB-BNW

ORDER

I. INTRODUCTION

Before the Court are Defendant Padeshah Holdings, Ltd's ("Padeshah") Motion for Summary Judgment, Plaintiff Nationstar Mortgage's ("Nationstar") Motion for Partial Summary Judgment, Defendant Legacy Estates Property Owners Association's (the "HOA") Motion for Summary Judgment, Nationstar's Motion to Substitute Party and Padeshah's Motion for Leave to File Supplemental Authority. ECF Nos. 73–76, 98. For the following reasons, the Court grants Padeshah and the HOA's motions for summary judgment and denies the other motions.

II. PROCEDURAL BACKGROUND

Nationstar began this case by filing a complaint on August 15, 2016. ECF No. 1. The complaint sought declaratory relief that a HOA nonjudicial foreclosure sale conducted under Chapter 16 of the Nevada Revised Statutes ("NRS") in 2012 did not extinguish a deed of trust it

1 held on a Las Vegas property. Id. The HOA answered the complaint on August 25, 2016. ECF No.
2 11. Defendant Padeshah Holdings answered the complaint on September 20, 2016. ECF No. 16.
3 Defendant Las Vegas Development Group, LLC (“LVDG”) answered the complaint and asserted
4 crossclaims against Padeshah Holdings, Third Party Defendants Manouchehr S. Dezfooli and
5 Soosan Dezfooli, and counterclaims against Nationstar. ECF No. 21. Nationstar answered the
6 counterclaim on January 4, 2017. ECF No. 23. On April 20, 2017, the Court stayed the case
7 pending the resolution of pertinent cases before the Ninth Circuit and Nevada Supreme Court. ECF
8 No. 47. On February 19, 2019, the Court lifted the stay. ECF No. 51. On April 9, 2019, the Court
9 held a hearing regarding discovery. ECF No. 58. On September 12, 2019, Defendant Padeshah
10 moved for summary judgment. ECF No. 73. A response and reply were filed. ECF Nos. 78, 85.
11 Nationstar moved for partial summary judgment on September 16, 2019. ECF No. 74. A response
12 and reply were also filed. ECF Nos. 79, 81, 84, 88. Nationstar moved for leave to file supplemental
13 authority regarding the motion for partial summary judgment motion on March 9, 2020. ECF No.
14 89. The HOA moved for summary judgment on September 16, 2019. A response and reply were
15 filed. ECF Nos. 77, 82. Nationstar moved to substitute party on September 19, 2019. ECF No. 76.
16 A response and reply were filed. ECF Nos. 80, 86. On April 28, 2020, Padeshah moved for leave
17 to file supplemental authority. ECF No. 98. A response and reply were filed. ECF Nos. 101, 102.
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19 On March 26, 2020, the Court granted a stipulation dismissing all claims as to Defendant
20 Las Vegas Development Group, LLC (“LVDG”) and terminating their participation in this
21 litigation. ECF No. 97.
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1 **III. FACTUAL BACKGROUND**

2 The Court makes the following findings of undisputed and disputed facts.¹

3 **a. Undisputed facts**

4 This matter concerns a nonjudicial foreclosure sale on a property located at 2074 Troon
5 Drive, Henderson, NV 89074 (the “property”). The property sits in a community governed by the
6 Legacy Estates Property Owners Association (the “HOA”). The HOA requires the community
7 members to pay dues.
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9 Third-Party Defendants Manouchehr S. Dezfooli and Soosan Dezfooli purchased the
10 property and financed their purchase with a \$1,520,000.00 loan as evidenced by a deed of trust
11 recorded on March 22, 2007. The lender was Countrywide Bank, FSB, and Mortgage Electronic
12 Registration Systems, Inc (“MERS”) served as the beneficiary under the deed of trust. On or about
13 October 29, 2008, the Dezfoolis, operating under a family trust, secured another loan against the
14 property for \$2,650,000. The lender and trustee for the second deed of trust was Town & Country
15 Bank.
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17 On or about August 24, 2009, MERS transferred its interest under the Countrywide Deed
18 of Trust to Deutsche Bank National Trust company as evidenced by a corporate assignment
19 recorded on August 24, 2009. The Dezfoolis fell behind on their HOA payments, and the HOA,
20 through its trustee Nevada Association Services, Inc (“NAS”) recorded a notice of delinquent
21 assessment. The HOA recorded a release of the delinquent assessment lien on May 7, 2010.
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23 Nationstar became the deed of trust beneficiary in 2013, as evidenced by an assignment of
24 deed of trust recorded on September 4, 2013. In 2011, the Dezfoolis again fell behind on their
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¹ The Court takes judicial notice of the publicly recorded documents related to the deed of trust and the foreclosure sale. Fed. R. Evid. 201 (b), (d). Lee v. City of Los Angeles, 250 F.3d 668, 690 (9th Cir. 2001) (permitting judicial notice of undisputed matters of public record).

1 required HOA dues, and the HOA, through its trustee Defendant Nevada Association Services,
 2 Inc. (“NAS”), recorded a notice of delinquent lien assessment in March 2011, a notice of default
 3 and election to sell in August 2011, and a notice of foreclosure sale in January 2012. The notice
 4 of default and notice of foreclosure sale were mailed to all parties whose interests appeared in the
 5 records of the Clark County Recorder, including Countrywide, Deutsche Bank, and Town &
 6 Country Bank.

8 In February 2012, after the HOA had recorded its August 2011 notice of default but before
 9 it had conducted the foreclosure sale, Nationstar’s predecessor-in-interest Bank of America, N.A.
 10 (“BANA”), contacted NAS through its legal counsel Miles, Bauer, Bergstrom & Winter, LLP
 11 (“Miles Bauer”). In a letter dated May 17, 2016², an attorney from Miles Bauer inquired as to what
 12 the superpriority portion of the lien was. The letter stated, in part:

14 It is unclear, based upon the information known to date, what amount the nine months' of
 15 assessments pre-dating the NOD actually are. That amount, whatever it is,
 16 is the amount BANA should be required to rightfully pay to fully discharge its
 17 obligations to the HOA per NRS 116.3102 and my client offers to pay that sum upon
 presentation of adequate proof of the same by the HOA.

18 There is no record of NAS responding to this letter. The HOA foreclosed on the property
 19 on May 18, 2012, and LVDG purchased the property for \$19,000. LVDG quitclaimed its interest
 20 in the property as evidenced by a quitclaim deed recorded on February 15, 2013. Meelad Dezfooli,
 21 the sole employee of Padeshah Holdings Limited, is the child of Third-Party Defendants Soosan
 22 Dezfooli and Manouchehr Dezfooli.

24 **b. Disputed Facts**

25 The parties dispute the legal effect of the circumstances.

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 28 ² The letter appears to be dated 2016 rather than 2012 in error. No party disputes the date of the letter.

IV. LEGAL STANDARD

Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show “that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); accord Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). When considering the propriety of summary judgment, the court views all facts and draws all inferences in the light most favorable to the nonmoving party. Gonzalez v. City of Anaheim, 747 F.3d 789, 793 (9th Cir. 2014). If the movant has carried its burden, the non-moving party “must do more than simply show that there is some metaphysical doubt as to the material facts.... Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial.” Scott v. Harris, 550 U.S. 372, 380 (2007) (alteration in original) (internal quotation marks omitted). It is improper for the Court to resolve genuine factual disputes or make credibility determinations at the summary judgment stage. Zetwick v. Cty. of Yolo, 850 F.3d 436, 441 (9th Cir. 2017) (citations omitted).

V. DISCUSSION

a. Statute of Limitations

The HOA argues, and this Court agrees, that Nationstar’s claims against it are time-barred. For statute of limitations calculations, time is computed from the day the cause of action accrued. Clark v. Robison, 944 P.2d 788, 789 (Nev. 1997). The foreclosure sale at issue in this matter occurred on May 18, 2012. The Court finds that this is the date upon which all of Nationstar’s claims regarding the invalidity of the foreclosure sale arose. The complaint was filed on August 15, 2016, just over four years later.

The Court finds that, to the extent Nationstar’s pleading relates to any alleged violation of

1 a right protected by statute, Nationstar's claims carry a three-year statute of limitations pursuant
2 to NRS 11.190(3)(a), which applies to actions upon a liability created by statute. See Carrington
3 Mortg Servs., LLC v. Tapestry at Town Ctr. Homeowners Ass'n, 381 F. Supp.3d 1289, (D. Nev.
4 2019) reconsidered in part on other grounds in Carrington Mortg. Servs., LLC v Tapestry at Town
5 Ctr. Homeowners Ass'n, No. 2:17-cv-01047-RFB-BNW, 2020 WL 1434278 (D. Nev. Mar. 24,
6 2020). Therefore, Nationstar's second and third causes of action for breach of NRS 116.1113 are
7 entirely foreclosed. To the extent Nationstar seeks relief based on alleged unconstitutionality or on
8 equitable grounds, Nationstar's claims fall within the four-year catch-all provision at NRS 11.220.
9 However, those claims are also still untimely as Plaintiff filed its complaint more than four years
10 after the foreclosure sale occurred. The Court therefore finds that all of Plaintiff's claims are time-
11 barred as to the HOA and grants summary judgment to the HOA.

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14 However, while Nationstar brought its quiet title claim against all Defendants, only the
15 HOA moved for summary judgment on the ground that the claim is time-barred. Thus while
16 Plaintiff's quiet title claim against the HOA is time-barred, its claims for quiet title against
17 Defendant Padeshah and the Padeshah Family Trust may proceed, as neither of those Defendants
18 have raised the statute of limitations as an affirmative defense in their answers, and the defense is
19 therefore waived. John R. Sand & Gravel Co. v. United States, 552 U.S. 130, 133 (2008) (noting
20 that generally limitations periods are affirmative defenses that the defendant must raise at the
21 pleading stage).

22 23 24 **b. Standing**

25 Padeshah argues that Nationstar does not have standing to bring this action because the
26 sole evidence Nationstar submits of its ownership of the deed of trust is an assignment of deed of
27 trust from MERS, which had previously transferred all interest it held in the property to Deutsche
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1 Bank. For this reason, Padeshah argues that Nationstar is not the real party in interest.

2 To have standing under Article III of the U.S. Constitution, a party must assert an (1)
3 injury-in-fact; (2) that is fairly traceable to the challenged conduct of the defendant; and (3) that is
4 likely to be redressed by a favorable court decision. Spokeo v. Robbins, 136 S. Ct. 1540, 1547
5 (2016). In addition to establishing constitutional standing, a party must also have prudential
6 standing, which encompasses “at least three broad principles: the general prohibition on a litigant’s
7 raising another person’s legal rights, the rule barring adjudication of generalized grievances more
8 appropriately addressed in the representative branches, and the requirement that a plaintiff’s
9 complaint fall within the zone of interests protected by the law invoked.” Lexmark Intern., Inc. v.
10 Static Control Components, Inc., 572 U.S. 118, 126 (2014) (citing Elk Grove Unified Sch. Dist. v.
11 Newdow, 542 U.S. 1, 12 (2004)).

14 Rule 17 of the Federal Rules of Civil Procedure requires that an action “be prosecuted in
15 the name of the real-party-in interest.” Fed. R. Civ. P. 17(a). Rule 17(a) does not define the term
16 “real-party-in interest,” but instead “allows a federal court to entertain a suit at the instance of any
17 party to whom the relevant substantive law grants a cause of action.” U-Haul Intern., Inc. v. Jartan,
18 Inc., 793 F.2d 1034, 1038 (9th Cir. 1986). The Court must thus look to the substantive law under
19 which the right is brought, while also bearing in mind that “[t]he modern function of the rule is
20 simply to protect the defendant against a subsequent action by the party actually entitled to recover,
21 and to insure generally that the judgment will have its proper effect as res judicata.” Id. at 1039
22 (internal citations and alterations omitted).

25 The primary relief that Nationstar seeks is quiet title through NRS 40.010. NRS 40.010
26 provides that “an action may be brought by any person against another who claims an estate or
27 interest in real property, adverse to the person bringing the action for the purpose of determining
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1 such adverse claim.” Nev. Rev. Stat. § 40.010. The relevant substantive law here clearly gives
2 Nationstar a cause of action. Nationstar is an entity that claims an interest in the property—in this
3 case an interest in a deed of trust secured on the property. Nationstar has submitted to the Court
4 evidence of this interest through the 2013 assignment. Nationstar is not currently seeking the
5 ability to foreclose on the property, but merely seeks standing for declaratory relief as to the deed
6 of trust’s continued validity. The problem that Rule 17(a) was designed to address of potential
7 duplicative actions and res judicata is therefore not of particular concern in this case. Even if
8 Nationstar or Deutsche Bank later dispute who is the current record beneficiary of the deed of trust,
9 the question of whether the HOA sale extinguished the deed of trust—which is the only question
10 presently before the Court—would not be implicated by that decision. Furthermore, all parties
11 claiming an interest in the deed of trust would be bound by the decision this Court makes as to
12 whether or not the deed of trust survived the HOA sale.

15 Accordingly, despite any potential conflicting deeds of trust, the Court finds that Nationstar
16 nevertheless has constitutional standing, prudential standing, and a legal substantive right as the
17 real-party in interest under Rule 17. First, Nationstar has demonstrated adequate constitutional
18 standing. An ‘injury-in-fact is an invasion of legally protected interest which is (a) concrete and
19 particularized, and (b) actual or imminent, not conjectural or hypothetical.” Safer Chemicals,
20 Healthy Families v. U.S. Env’tl. Prot. Agency, 943 F.3d 397, 410–11 (9th Cir. 2019) (citing Lujan
21 v. Defs. of Wildlife, 504 U.S. 555, 560 (1992)). “A concrete injury is one that actually exists,
22 meaning that it is real and not abstract,” while a “particularized” injury is one that affects the
23 plaintiff in a personal and individual way.” Id. (citations and quotation marks omitted). Here
24 Nationstar has articulated an injury-in-fact—an interest in a deed of trust that may or could be
25 extinguished. It has demonstrated that the injury is traceable to the Defendants’ actions—
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1 specifically their actions in conducting the sale (the HOA) and purchasing the property (LVDG
2 and Padeshah). Nationstar can demonstrate that the injury would be redressed by a favorable court
3 decision that determines that the deed of trust survived the HOA foreclosure sale. Finally,
4 Nationstar is seeking to vindicate its own legal interest in the property rather than that of another
5 party, thus satisfying both prudential and Rule 17(a) requirements.
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7 The Court therefore denies Plaintiff's Motion to Substitute Parties and finds that Nationstar
8 has standing to proceed with this action.

9 **c. Tender**

10 The Court finds that the deed of trust did not survive the HOA foreclosure sale, because
11 there was no valid tender and the conditions for demonstrating futility of tender have not been met.
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13 Under current Nevada law, tender is excused when the HOA trustee has a policy of
14 rejecting checks, and the party effectuating the tender had *knowledge* of the business practice. 7510
15 Perla Del Mar Ave Tr. v. Bank of Am., 458 P.3d 348, 351-52 (Nev. 2020).
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17 In this case, Nationstar submits evidence, including deposition testimony of NAS's
18 30(b)(6) corporate designee, excerpts of testimony from a trial in a different case from another
19 NAS employee, and excerpts of deposition testimony from the founder of NAS in a separate case
20 that all purport to demonstrate that NAS had a policy of rejecting checks that had conditions
21 accompanying them.
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23 But Perla Del Mar makes clear that it is not enough that the HOA trustee have a policy of
24 rejecting checks—for futility to be demonstrated, there must also be evidence that the entity
25 making the tender *knew* of the policy. 7510 Perla Del Mar Ave Tr. v. Bank of Am., N.A., 458 P.3d
26 348, 351 (upholding lower court's finding of futility "[b]ecause the evidence at trial established
27 that at the time relevant to this action, it was NAS's business policy to have its receptions reject
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1 any check for less than the full lien amount, and because the evidence *further established that*
 2 *Miles Bauer and the Bank had knowledge of this business practice.*”) (emphasis added). There is
 3 no such evidence in the record. Nationstar attaches no affidavit or declaration from anyone at Miles
 4 Bauer who attests that the policy was known to anyone working at Miles Bauer or its client. While
 5 there may be evidence of such knowledge in other cases, Nationstar must submit evidence in *this*
 6 *record*, that establishes that its predecessor-in interest had knowledge of NAS’s policy.
 7 Particularly in circumstances such as this, where no check or accompanying letter were actually
 8 ever sent to NAS, the Court cannot assume that Miles Bauer and the bank it worked for knew that
 9 such checks would have been rejected if they were received. Because there is no such evidence,
 10 the Court cannot find that Nationstar’s predecessor-in-interest need to tender was excused on the
 11 basis of futility. As it is undisputed that no valid tender was made, the Court finds that the HOA
 12 sale extinguished Nationstar’s deed of trust.

13 **d. Inadequate Sales Price and Unfair Sale**

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 16 Nationstar argues that if the Court finds that the foreclosure sale extinguished its deed of
 17 trust, it should nevertheless invalidate the sale because the sales price was grossly inadequate and
 18 the HOA sale itself was unfair. Nationstar contends that the HOA sold the property at 97%
 19 discount, selling for \$19,000 a property that had been worth \$800,000 at the time. Nationstar
 20 cannot succeed on its claim on the basis of alleged inadequate sales price. The version of NRS
 21 Chapter 116 in effect at the time did not contain any provisions requiring that an HOA foreclosure
 22 sale be commercially reasonable, nor did it provide for parties to be able to set aside foreclosure
 23 sales as being commercially unreasonable. Furthermore, the Nevada Supreme Court has clearly
 24 held that HOA foreclosure sales are not governed by the commercial reasonableness standard of
 25 the Uniform Commercial Code (“UCC”) as adopted in Nevada: “we hold that [commercial
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1 reasonableness] has no applicability in the context of an HOA foreclosure involving the sale of
2 real property . . . inadequacy of price, however gross, is not in itself a sufficient ground for setting
3 aside a trustee's sale absent additional proof of some element of fraud, unfairness, or oppression
4 as accounts for and brings about the inadequacy of price.” Nationstar Mortg., LLC v. Saticoy Bay
5 LLC Series 2227 Shadow Canyon, 405 P.3d 641, 642–43 (Nev. 2017) (internal citations omitted).
6

7 Nationstar argues that various irregularities rose to the level of fraud, unfairness or
8 oppression that warrant overturning the sale. First, Nationstar argues that NAS represented that the
9 foreclosure sale would not extinguish the first deed of trust. To support its argument, Nationstar
10 attaches a press release from NAS dated November 2010, and then references a reply brief filed in
11 a different case before this Court from June 2011, but does not include the reply brief in its
12 accompanying exhibits. The press release and the purported reply brief are insufficient to establish
13 that NAS represented that the foreclosure sale would not extinguish the first deed of trust during
14 the relevant time periods for this case, and, more importantly, that this representation was known
15 and relied on by Miles Bauer and Nationstar’s predecessor-in-interest. Compare with ZYZZX2 v.
16 Dixon, No. 2:13-cv-1307 JCM (PAL), at *1, * 5, 2016 WL 118166 (D. Nev. 2016) (unfairness
17 could void HOA sale where the HOA sent a letter to the deed of trust holder stating that the HOA
18 foreclosure sale would not affect the senior lender’s lien).
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21 Second, Nationstar argues that the general uncertainty of the law at the time is an
22 irregularity that made the sale unfair. The Court disagrees. The Nevada Supreme Court has not
23 identified legal uncertainty as a potential factor causing unfairness in a sale, and the Court finds
24 no reason to do so here. Parties, including sophisticated and counseled parties such as the entities
25 here, often have to navigate legal uncertainty. The Court does not find it prudent to deem legal
26 uncertainty a reason to invalidate a foreclosure sale.
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1 Third, Nationstar argues that there is unfairness because the sole employee of the entity
 2 that currently owns the property, Padeshah Holdings, Ltd., is related to the former homeowners,
 3 Manouchehr S. Dezfooli and Soosan Dezfooli. However, this fact is insufficient to establish
 4 unfairness. First, Defendant Padeshaha Holdings, Ltd did not purchase the property at the HOA
 5 sale—rather Defendant Las Vegas Development Group, LLC did. LVDG later quitclaimed the
 6 property to Padeshah Holdings. Nationstar does not allege, nor does the record indicate, that
 7 LVDG had a familial relationship with the Dezfoolis. The Court therefore finds this argument
 8 insufficient to find that there was unfairness that warranted overturning the sale.
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10 **e. As-Applied Due Process**

11 Finally, Nationstar argues that its as-applied due process rights would be violated were the
 12 Court to find that the foreclosure sale extinguished its deed of trust. Nationstar does not contend
 13 that its predecessor-in-interest BANA did not have notice of the foreclosure sale. Rather,
 14 Nationstar argues that because BANA was not able to ascertain the superpriority portion of the
 15 lien after making an inquiry, the actual notice it received was inadequate, and therefore violated it
 16 and Nationstar's as-applied due process rights.
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18 The Court does not find this argument persuasive. Both the Ninth Circuit and the Nevada
 19 Supreme Court have held that a party's due process rights are not violated when evidence
 20 establishes that the party had actual notice of the foreclosure sale. Bank of Am., N.A. v. Arlington
 21 W. Twilight Homeowners Ass'n, 920 F.3d 620, 624 (9th Cir. 2019); Saticoy Bay LLC Series 350
 22 Durango 104 v. Wells Fargo Home Mortg., 388 P.3d 970, 973 (Nev. 2017). In its briefing,
 23 Nationstar makes much of the distinction between as-applied and facial due process challenges,
 24 but cites no binding authority to support its position that the actual notices that its predecessor
 25 received were inadequate. Nationstar cites a Sixth Circuit case for the principle that minimal
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1 adequate notice in foreclosure contexts includes notice of the reason for the default and a total
2 amount owed. The notice of default and election to sell in this case, which Nationstar does not
3 dispute that its predecessor-in-interest received, states both the reasons for the default and the full
4 amount owed. Neither the Ninth Circuit nor the Nevada Supreme Court have held that there is an
5 obligation of the HOA to separate the superpriority from the subpriority components of the lien on
6 the notice of default under the pre-2015 version of NRS Chapter 116. The Court therefore finds
7 that there was adequate and actual notice, and no as-applied due process rights were violated.
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10 **f. Motion for Leave to File Supplemental Authority**

11 Defendant Padeshah has filed a motion for leave to file supplemental authority. Padeshah
12 contends that the supplemental authority establishes that Nationstar's deed of trust was
13 extinguished by operation of law pursuant to NRS 106.240 in August 2019. However, the Court
14 has already found that the HOA foreclosure sale extinguished Nationstar's deed of trust in May
15 2012. Accordingly, the Court denies Padshah's motion for leave to file supplemental authority.
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17 **VI. CONCLUSION**

18 **IT IS ORDERED** that Defendant Padeshah Holdings, Ltd's Motion for Summary
19 Judgment (ECF No. 73) is GRANTED. The Court quiets title and declares that the HOA
20 foreclosure sale extinguished Plaintiff Nationstar Mortgage LLC's deed of trust on the property.
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22 **IT IS FURTHER ORDERED** that Plaintiff Nationstar Mortgage LLC's Motion for
23 Partial Summary Judgment (ECF No. 74) is DENIED.

24 **IT IS FURTHER ORDERED** that Defendant Legacy Estates Property Owners
25 Association's Motion for Summary Judgment (ECF No. 75) is GRANTED.

26 **IT IS FURTHER ORDERED** that Plaintiff Nationstar Mortgage LLC's Motion to
27 Substitute Party (ECF No. 76) is DENIED.
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IT IS FURTHER ORDERED that the lis pendens filed in this case (ECF No. 3), is expunged.

DATED: September 29, 2020.

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